

RECORDATION NO. 18630-18  
FILED 1825

ASSIGNMENT OF RAILWAY CAR LEASE  
AND  
SECURITY AGREEMENT  
("ASSIGNMENT")

DEC 30 1993 -8 45 AM  
INTERSTATE COMMERCE COMMISSION

KNOW ALL MEN BY THESE PRESENTS, that the undersigned (hereinafter "Assignor") for value received, does hereby sell, assign, transfer and set over unto **Key Bank USA N.A.**, its successors and/or assigns ("Assignee"), all of Assignor's right, title and interest in and to, but none of Assignor's obligations under, (i) a Railway Car Lease No. 93-1014 dated November 23, 1993 between **Mid-Am Equipment, Inc** (Lessor) and **Phillips Petroleum Company** ("Lessee") (the "Railway Car Lease"), and all related documents executed in connection therewith (the "Lease"), and (ii) the equipment (the "Equipment") leased under such Railway Car Lease (as defined in the Railway Car Lease), including, without limitation, the residual value thereof (collectively, the "Collateral").

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns forever, or for such shorter period as hereinafter may be indicated.

FOR THE PURPOSE OF SECURING the payment of the Rental Streams under such Railway Car Lease to pay sums due and owing under the Promissory Note ("Note"), executed by the parties simultaneously herewith and bearing the same date as this Assignment.

TO PROTECT THE SECURITY OF THIS ASSIGNMENT, ASSIGNOR COVENANTS AND AGREES AS FOLLOWS:

1. This Assignment shall continue in full force and effect until (a) all sums due and payable under the Note have been fully paid and satisfied, and (b) all other obligations of Assignor under the Note and this Assignment have been satisfied. At such time this Assignment and the authority and powers herein granted by Assignor to Assignee shall cease and terminate.

2. Assignor hereby irrevocably constitutes and appoints Assignee and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Assignor or in Assignee's own name, for the purpose of carrying out the terms of this Assignment, after a Default or Event of Default has occurred and is continuing in the Note or in this Assignment, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Assignment and, without limiting the generality of the foregoing, hereby gives said attorneys the power and right, on behalf of Assignor, without notice to or assent by Assignor, to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral in such manner as is consistent with the Uniform Commercial Code of the State of New York and other applicable laws, and as fully and completely as though Assignee were the absolute owner thereof for all purposes, and to do at Assignor's expense, at any time, or from time to time, all acts and things which Assignee deems necessary to protect, preserve or realize upon the Collateral and Assignee's security interest

therein, in order to effect the intent of this Assignment, all as fully and effectively as Assignor might do, including, without limitation, (i) the filing and prosecuting of registration and transfer applications with the appropriate federal, state or local agencies or authorities (ii) the execution, delivery and recording, in connection with any sale or other disposition of any Collateral, of the endorsements, assignments or other instruments of conveyance or transfer with respect to such Collateral.

3. As used in this Assignment, the term "Default" shall mean any event or condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default. As used herein, the term "Event of Default" shall mean one or more of the following events: (a) the occurrence of any "default" or "event of default" under the Note or this Assignment; (b) the failure by Assignor duly and fully to comply with any covenant, condition or agreement of this Assignment which failure is not cured within ten (10) days after written notice from Assignee; or (c) the breach of any representation or warranty by Assignor contained in this Assignment.

4. Upon the occurrence of any Event of Default, Assignee may at its option, with or without notice or demand of any kind (except as may be provided herein or in the Assignment, and without waiving such Event of Default, exercise any or all of the following remedies:

(a) Perform any and all obligations of Assignor under the Railway Car Lease or this Assignment and exercise any and all rights of Assignor herein or therein as fully as Assignor itself could do, including, without limiting the generality of the foregoing: enforcing, modifying, extending or terminating the Lease, collecting, modifying, compromising, waiving or increasing the rent payable thereunder; and entering into new lease with respect to the Equipment on any terms and conditions deemed desirable by Assignee, and, to the extent Assignee shall incur any costs in connection with the performance of any such obligations of Assignor, including costs of litigation, then all such costs shall be due and payable on demand and shall form a part of the obligations secured hereby;

(b) In Assignor's or Assignee's name, institute any legal or equitable action which Assignee in its sole discretion deems desirable to collect and receive the rent, issues and profits under the Railway Car Lease assigned hereby; and

(c) Collect the rents, issues and profits and any other sums due under the Railway Car Lease and with respect to the Equipment, and apply the same in such manner as Assignee in its sole discretion may elect.

(d) Liquidate the Equipment pursuant to law.

Assignee shall have full right to exercise any or all of the foregoing remedies without regard to the adequacy of security for any or all of the obligations secured hereby, and with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee, and shall have full right to enter upon, take possession of, and use and operate all or any portion of the Equipment which Assignee in its sole discretion deems desirable to effectuate any or all of the foregoing remedies, with full power to make alteration, renovations, repairs or replacements thereto.

5. The failure of Assignee to exercise any right hereunder by reason of any Default in the Note or this Assignment shall not constitute a waiver thereof by Assignee or preclude Assignee from exercising such right at any time by reason of any such breach or happening of such event or any subsequent breach or happening of such event.

6. Assignee shall not in any way be liable to Assignor for any act done or anything omitted to be done to the Equipment, the Lease or the Rent by or on behalf of Assignee in good faith in connection with this Assignment except for the consequences of its own gross negligence or willful misconduct. Assignee shall not be liable for any act or omission of its agents, servants, employees or attorneys, provided that reasonable care is used by Assignee in the selection of such agents, servants, employees and attorneys. Assignee shall be accountable to Assignor only for monies actually received by Assignee pursuant to this Assignment.

7. In the event of the breach or failure of any representation or warranty set forth in this Assignment or in the Note, or any misrepresentation or nonfulfillment of any covenant on the part of Assignor provided in this Assignment or in the Note or in any statement or certificate furnished by Assignor to Assignee hereunder or thereunder, negligent conduct of the Assignor in endeavoring to repossess any Equipment or to collect sums due under the Railway Car Lease, Assignor agrees to and shall defend, indemnify and hold Assignee harmless from and against any and all costs, losses, expenses, damages, claims, demands, actions, causes of actions, judgments, and settlements (whether or not meritorious) of any nature arising out of, or resulting from, any such breach or failure, including reasonable attorneys' fees. The foregoing indemnity is a continuing indemnity and shall survive termination of this Assignment and the Note.

8. Assignor is the owner of the Collateral free from any adverse lien, security interest or other encumbrance, except for the security interest created by this Agreement.

9. Assignor shall be the owner of the Collateral free from any lien, security interest or other encumbrance, and Assignor shall defend the same against all claims and demands of all persons at any time claiming the same or any interests therein adverse to Assignee. Assignor shall not pledge, mortgage or create, or suffer to exist a security interest in the Collateral in favor of any person other than Assignee.

10. Upon request of Assignee, Assignor shall execute and deliver to Assignee, such further instruments as Assignee may deem reasonably necessary to effect this Assignment and the covenants of Assignor contained herein. Assignor shall cause such further instruments to be recorded in such manner and in such places as may be required of Assignee.

11. All of the representations, warranties, covenants, agreements and provisions in this Assignment by or for the benefit of Assignee shall bind and inure to the benefit of its successors and assigns.

12. This Assignment may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. This Assignment shall be governed by, construed and enforced in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed and delivered this 22 day of December, 1993.

Assignor:

**MID-AM EQUIPMENT, INC.**

By:

Name: ROBERT J. SCHROEDER

Title: PRESIDENT

STATE OF NEW YORK )

) SS.:

COUNTY OF *Maricopa*)

On this 22nd day of December, 1993, before me the subscriber personally appeared ROBERT J. SCHROEDER, who being by me duly sworn, did depose and say; that he resides at 2422 S. LOS ALTOS MESA AZ, that he is PRESIDENT of MID-AM EQUIPMENT, INC., the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

Robert Lyle Grant  
NOTARY PUBLIC

